IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 27 OF 2003

Sayyad Mahaboob
Central Jail Aguada,
Bardez-Goa. ... Petitioner.

versus

State of Goa as rep.
by the Inspector General
of Prisons. ... Respondent.

Mrs. Asha Dessai, Advocate under Legal Aid Scheme.

Mr. S. N. Sardessai, Public Prosecutor for the State/ Respondent.

CORAM: P. V. HARDAS, J.

DATED: 16TH OCTOBER, 2003.

ORAL JUDGMENT

Rule.

2. Rule made returnable forthwith. By consent of parties, this Petition is heard finally at the stage of Admission.

3. This Petition of the Petitioner from Jail, impugns the Order passed by the Inspector General of Prisons, Panaji, Goa, dated 4th July, 2003, refusing to grant parole to the Petitioner.

4. The Petitioner has been convicted by the Court of Sessions at Margao, in Sessions Case No.19/97 for an offence punishable under Sections 304(i) and 323 r/w 34 of the Indian Penal Code. The Petitioner has been sentenced to undergo Rigorous Imprisonment for 5 years and fine of Rs.2000/-, in default Simple Imprisonment for 3 months and Simple Imprisonment for 6 months respectively. Both these sentences are directed to run concurrently. According to the Petitioner, he was on Bail for more than 2 years during the pendency of this Appeal in this Court. As per the nominal roll of the prisoner filed by the Respondent along with the Affidavit, it is stated that the Petitioner has to undergo 3 years, 10 months and 15 days of his term of imprisonment.

5. On 25th May, 2003, the Petitioner applied for grant of parole. The grounds stated by the Petitioner in his application for being released on parole was that his wife was in the family way and his mother was suffering from various diseases associated with advanced age. Since, he did not have any other

relative, parole was requested for. As per the Report dated 10th June, 2003, issued by the Superintendent of Police, South Goa District, Margao, the Police Officers after conducting the enquiries have stated therein that there were strong objections for release of the Petitioner on parole as he may take revenge against the witnesses who had deposed against him. The said Report also states that the wife of the deceased apprehended that the Petitioner may seek revenge against her three children, if released on parole. The Inspector General of Prisons in paragraph 3 of the Order has stated that having carefully gone through the Police Report, the release of the Petitioner on parole is not justified in public interest. The grounds stated is that since the local people of that locality were strongly objecting for the release of the Petitioner, the parole came to be rejected.

6. Mrs. Asha Dessai, learned Advocate who has been appointed from the Legal Aid Panel on behalf of the Petitioner and who has very ably argued the Petition has submitted that the Police Report does not refer to any enquiry being conducted by the Police in respect of the reasons relied by the Petitioner for his release on parole. The learned Counsel has also submitted that the Petitioner was released on Bail by this Court pending the decision of his Appeal. For a

period of almost 5 years, the Petitioner was on Bail and there are no allegations that the Petitioner had misused the discretion exercised by the Courts in releasing the Petitioner on Bail. Thus, it is submitted that the apprehension of the widow of the deceased that the Petitioner would seek revenge of the children of the deceased is totally unfounded. Obviously, the Police while conducting the enquiry were not apprised of the fact that the Petitioner was on Bail during the trial and during the pendency of the Appeal for a period of almost 5 years.

7. Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the Respondent has made available the record and has submitted that after due Police enquiry, the application for release on parole filed by the Petitioner came to be rejected. According to him, there are no grounds justifying any interference in the Order impugned in the present Petition.

8. A cursory look at the Report would show that there is no enquiry conducted by the Police in respect of the genuineness of the reasons placed by the Petitioner for seeking his release on parole. Also no enquiry appears to have been conducted in respect of the conduct of the Petitioner during the period he was

released on Bail. Mechanically, the application for parole came to be rejected only on the ground that the widow of the deceased apprehended that the Petitioner may wreak vengeance against the children of the deceased. According to me, therefore, this is a fit case for setting aside the impugned Order and remitting the matter back to the authorities for consideration afresh as per rules.

9. Accordingly, Criminal Writ Petition No.27 of 2003 succeeds. Rule made absolute. The Order impugned in this Petition is hereby quashed and set aside and the matter is remitted to the authorities for reconsideration afresh. The concerned authorities shall decide the application for parole within six weeks from the date of receipt of the Writ of this Court.

P. V. HARDAS, J.

RD.